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U.S. Environmental Protection Agency Brownfields Program Funding: Association of State and Territorial Solid Waste Management Officials Position Paper Supporting Increased 128(a) Grant Funding

05/15/2023

The Association of State and Territorial Waste Management Officials (“ASTSWMO”) issued a position paper addressing the United States Environmental Protection Agency’s (“EPA”) Brownfields program.

The position paper discusses EPA’s federal funding through its Standard 128(a) grant program.

The federal government and many states (including Arkansas) have statutes, regulations, and policies that are intended to address “Brownfields.” Brownfields are often referred to as real property (improved and unimproved), the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants, or contaminants.

Incentive provisions, funding programs, liability exemptions, and action/cleanup standards have been utilized for a number of years to attempt to reduce the barriers for reuse or redevelopment of Brownfield properties. The goal of the Brownfield programs is to encourage redevelopment and investment in such properties to increase the local tax base, facilitate job growth, utilize existing infrastructure, encourage infield use, and take pressure off greenspace.

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) or Superfund authorizes EPA to provide funding to states and tribes to establish or enhance their environmental response programs. The annual funding is awarded and administered through cooperative agreements with EPA’s Regional Offices. Eligible entities include:

- A state, as defined in CERCLA § 101(27)
- An Indian Tribe, as defined in CERCLA § 101(36)
- Intertribal Consortia, as defined pursuant to federal regulations

Such funding can be utilized to:

- Establish or enhance the four elements of an effective state or tribal response program as specified in CERCLA Section 128
- Ensure that states and tribes maintain a public record of sites included in their programs

- Limited site assessments or cleanups at Brownfield sites
- Activities that increase the number of response actions conducted or overseen by a state or tribal response program
- Capitalizing revolving loan funds for cleanup
- Purchasing environmental insurance

The ASTSWMO 128(a) Brownfields position paper notes that this EPA grant program has:

. . . remained at its initial 2003 level while the number of applicants requesting funding has more than doubled.

The paper further notes that the Bipartisan Infrastructure Law has provided what it describes as the first ever increase to state Brownfields funding. This funding will be provided over five fiscal years (2022-2026). The position paper states by way of overarching position that:

. . . there should be a permanent increase in the Standard 128(a) Congressional Appropriation, to levels currently provided by the combination of Standard 128(a) and Supplemental 128(a) BIL funding. This permanent increase in appropriations (from \$50,000,000 to \$110,000,000), will ensure that State Brownfields programs are able to provide the critical support necessary for a robust national Brownfields program.

Components of the position paper include:

- Importance of Brownfield Reinvolvement
- Origin of the Brownfields Program
- 128(a) Funding Background
- State Brownfield Programs
- Bipartisan Infrastructure Law Funding
- Impacts on State Programs
- Brownfields Return on Investment

ASTSWMO describes itself as representing the 50 states, five territories and the District of Columbia whose mission is to enhance and promote effective state and territorial programs and to affect relevant national policies for waste and materials management, environmentally sustainable practices, and environmental restoration.

A copy of the position paper can be downloaded [here](#).